104TH CONGRESS
*2d Session*

SENATE

EXEC. REPT.
104–19

# TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ALBANIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, WITH ANNEX AND PROTOCOL

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JUNE 20, 1996.—Ordered to be printed

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Mr. HELMS, from the Committee on Foreign Relations, submitted the following

## REPORT

[To accompany Treaty Doc. 104–19]

The Committee on Foreign Relations to which was referred the treaty Between the Government of the United States of America and the Government of the Republic of Albania Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 11, 1995, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof as set forth in this report and the accompanying resolution of ratification.

### I. PURPOSE

The principal purposes for entering into a bilateral investment treaty (BIT) are to: protect U.S. investment abroad where U.S. investors do not have other agreements on which to rely for protection, encourage adoption of market-oriented domestic policies that treat private investment fairly, and support the development of legal standards consistent with the objectives of U.S. investors. The BIT, therefore, is intended to ensure that United States direct investment abroad and foreign investment in the United States receive fair, equitable and nondiscriminatory treatment.

### II. BACKGROUND

The proposed treaty together with the proposed annex and protocol was signed on January 11, 1995. No bilateral investment treaty is currently in force between the United States and Albania.

The proposed treaty, annex and protocol were transmitted to the Senate for advice and consent to ratification on September 6, 1995 (see Treaty Doc. 104–19). The Committee on Foreign Relations held a public hearing on the proposed treaty together with the proposed annex and protocol on November 30, 1995.

## III. SUMMARY

### A. GENERAL

Bilateral investment treaties (BITs) are the result of a treaty program begun in 1982 as a successor to the Friendship, Commerce, and Navigation Treaties that formerly set the framework for U.S. trade and investment with foreign countries. The BIT is based on a U.S. model treaty.

All parties must agree to the basic guarantees of the model before the United States will enter into negotiations on a treaty. The six basic guaranties contained in the model are:

investors receive the better of national or most favored nation status;

expropriation of private property is limited and a remedy exists;

investors have the right to transfer funds into and out of the country without delay using a market rate of exchange;

inefficient and trade distorting practices such as performance requirements are prohibited;

investment disputes may be submitted to international arbitration; and

top managerial personnel of an investor's choice may be engaged regardless of nationality.

Since 1982, the United States has signed 37 BITs, and the Senate has given its advice and consent to the ratification of 24 BITs. Twenty-two BITs are currently in force. The Senate has ratified two treaties that have not entered into force with Russia, where the Duma has failed to ratify, and with Ecuador, which was ratified by both countries, but the United States is delaying the exchange of instruments until Ecuador has fully implemented its obligations under the United States-Ecuador intellectual property rights agreement. There are currently 12 on-going negotiations for BITs with other countries.

### B. COMPARISON TO THE MODEL

The following is an analysis of the major provisions of the treaty and a comparison with the 1994 model prototype, which served as the foundation for the negotiation of the treaty.

Preamble.—The Preamble of the BIT establishes the goals of the treaty to include: greater economic cooperation, the stimulation of the flow of private capital and economic resources and the improvement of living standards, respect for internationally recognized worker rights, and the maintenance of health, safety and environmental measures of general application. The goals outlined are not legally binding but may be used to assist in interpreting the Treaty and in defining the scope of Party-to-Party consultation procedures pursuant to Article VIII.

The preamble of the BIT is identical to that of the Model. The 1994 Model adds to the 1992 Model BIT the caption, "Agreeing that these [treaty] objectives can be achieved without relaxing health, safety and environmental measures of general application."

Article I (definitions).—The BIT is identical to the Model, containing definitions for the following terms: company, company of a party, national, investment, covered investment (defined as "an investment of a national or a company of a Party in the territory of the other Party"), state enterprise, investment authorization, investment agreement, ICSID Convention, Centre (meaning "International Centre for the Settlement of Investment Disputes established by the ICSID Convention"), and UNCITRAL Arbitration Rules. The State Department analysis accompanying the treaty states that definitions are intended to be broad and inclusive in nature.

Article II (treatment of investment).—Article II establishes the obligations of the Parties with regard to the treatment of investment covered by the treaty. The Albanian BIT is identical to the Model, requiring Parties to grant the better of most-favored-nation or national treatment to covered investments and to ensure that state enterprises do the same (Art. III:1). (Most-favored-nation or "MFN treatment" for purposes of this treaty means treatment no less favorable than that which a Party accords, in like situations, to investments in its territory of nationals or companies of a third country. "National and MFN treatment" for purposes of the treaty means whichever of national treatment or MFN treatment is the most favorable.)

The BIT allows Parties to adopt or maintain exceptions to these obligations for sectors enumerated in the BIT Annex and prohibits Parties from requiring divestment of a covered investment at the time an exception becomes effective (Art. III:2(a)).

The BIT exempts from the treatment obligation in paragraph one procedures adopted in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO) (Art. III:2(b)).

The BIT requires Parties to accord covered investments certain minimum treatment and prohibiting Parties from impairing investments through unreasonable or discriminatory measures (Art. III:3).

The BIT requires Parties to provide effective means of asserting claims and enforcing rights with respect to covered investments (Art. II:4).

The BIT requires that Parties ensure that all laws, regulations, administrative processes of general application, and adjudicatory decisions pertaining to or affecting investments are promptly published or otherwise made publicly available (Art. II:5).

Article III (expropriation).—This article is identical to the Model: it prohibits expropriations of covered investments except if carried out for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the minimum treatment standards set forth in Article II (generally requiring "fair and equitable treatment") (Art. III:1); sets forth specific requirements as to compensation (Art. III:2); and establishes compensation based on

the currency in which the fair market value of the expropriated investment is denominated, and operates to protect the investor from exchange rate risk (Arts. III:3, III:4).

Separate standards are set for freely usable currency and for currency that is not freely usable. The term "freely usable" is not defined, although the State Department's Letter of Submittal indicates that the term refers to the International Monetary Fund standard, which currently includes the United States dollar, Japanese yen, German mark, French franc and British pound sterling.

Article IV (compensation for damages due to war and similar events).—The BIT is identical to the Model, requiring protection of investments during war or other civil conflicts. Parties must accord covered investments national and MFN treatment regarding any measures relating to losses that investments suffer due to war or other civil conflict or disturbance (Art. IV:2) and must accord restitution, or pay compensation in accord with the standards set forth in the expropriation article, in the event that covered investments suffer losses due to such events, where the losses result from requisitioning or unnecessary destruction of the investment (Art. IV:2).

Article V (transfers).—The BIT generally follows the Model, requiring Parties to allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory and listing activities that constitute transfers (Art. V:1). Where the Model lists "contributions to capital," the BIT contains the longer formulation, "initial and additional contributions to capital relating to the investment" (Art. V:1 (a)). U.S. negotiators have informed staff that this change was made to confirm the Parties' understanding of the intent of the Treaty.

Investment-related transfers also include: profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investments; interest, royalty payments, management fees, and technical assistance, and other fees; payments made under a contract, including a loan agreement; and compensation pursuant to Articles III and IV and payments arising out of an investment dispute (Art. V:1).

Transfers must be permitted in a freely usable currency at the market rate of exchange prevailing on the date of transfer (Art. V:2).

There is a discrepancy in language between the Model and the BIT in use of the term "return in kind" and "transfer in kind." Where the Model states that "returns in kind" must be permitted as authorized or specified in an investment authorization, investment agreement or other written agreement between the Party and a covered investment or a national or company of the other Party, the BIT applies this obligation to "transfers in kind" (Art. V:3). The State Department Letter of Transmittal refers to this provision as allowing "returns in kind." While the 1994 Model does not define "return," the 1992 Model defines the term as "as amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; or returns in kind" (1992 Model Art. I:(d)). It would appear, however, that the activities defined in "return"

would generally be covered in the list of transfers set forth in Article V:1.

The BIT is identical to the Model in providing that notwithstanding the above-described obligations, Parties may prevent a transfer through the equitable, non-discriminatory and good faith application of law relating to bankruptcy, issuing and trading in securities; criminal offenses; or ensuring compliance with judicial orders or judgements (Art. V:4).

Article VI (performance requirements).—The BIT follows the Model in prohibiting specified performance requirements from being imposed as conditions for the establishment, acquisition, expansion, management, conduct or operation of a covered investment. Specific requirements prohibited by this article include the use of local goods, the export of goods or services, the "balancing" of imports and exports, the transfer of technology, or the conduct of research in the host country. "Requirement" is defined to include any commitment or undertaking in connection with the receipt of a governmental permission or authorization. Like the model, requirements that serve as conditions for the receipt or continued receipt of an advantage are not prohibited requirements as parties may impose conditions for benefits and incentives.

Article VII (entry and employment of aliens).—The BIT is identical to the Model as to entry of and sojourn of aliens for investment purposes (Art. VII:1). Each Party may allow, subject to its laws and regulations, the entry into its territory of the other Party's nationals for certain purposes related to a covered investment and involving the commitment of a "substantial amount of capital." The article permits the engaging of top managerial personnel of choice regardless of nationality (Art. VII:2).

Article VIII (consultations).—The BIT is identical to the Model regarding the obligation of Parties to consult with respect to disputes and other matters arising under the Treaty.

Article IX (investor/state disputes).—The BIT is identical to the Model regarding provisions for consultation and arbitration in investor-State disputes. As in the Model, each Party consents to the submission of any investment dispute to binding international arbitration (Art. IX:4). Albania is a Party to a Convention on the Settlement of Investment Disputes between States and Nationals of Other States. As of January 1, 1995, Albania had not joined the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Article X (interstate disputes).—The BIT is identical to the Model in providing for binding arbitration for interstate disputes in the event such a dispute has not been resolved through consultations or other diplomatic means.

Article XI (preservation of rights).—The BIT is identical to the Model in allowing each Party to provide covered investments treatment that is more favorable than that minimally required under the BIT, as a result of national laws, regulations, administrative procedures, or adjudications, international legal obligations, or other obligations assumed by either Party.

Article XII (denial of benefits).—The BIT follows the Model as to the right to deny treaty benefits to companies controlled by nationals or firms of third countries where (1) the denying party does not

maintain normal economic relations with the third country or (2) the company has no substantial business activities in the territory of the Party in which it is legally constituted or organized.

Article XIII (taxation).—Tax matters are excluded from the coverage of the BIT in order to be dealt with in bilateral tax treaties. However, the BIT is identical to the Model in that investors may institute dispute proceedings with respect to tax provisions of an investment agreement or authorization or with respect to tax matters that result in expropriations. Before requesting arbitration, claimants must refer the question of whether the tax matter involves an expropriation to the competent tax authorities of both Parties. Arbitration may not be pursued if both Parties determine within nine months of the referral that the matter does not involve an expropriation. According to transmittal documents, the "competent tax authority" of the United States is the Assistant Secretary of the Treasury for International Tax Policy, who will make this determination only after consultation with the Inter-Agency Staff Coordinating Group on Expropriations.

Article XIV (measures not precluded).—The BIT is identical to the Model in its provision for exceptions for measures necessary for public order, the fulfillment of certain international obligations, and the protection of essential security interests. According to transmittal documents, measures to protect a Party's essential security interests are self-judging in nature, although each Party would expect the provisions to be applied by the other in good faith.

Like the Model, the BIT also allows Parties to prescribe special formalities for investments so long as the substance of treaty rights is not impaired. According to transmittal documents, such formalities could include reporting requirements for covered investments or for transfers of funds, or incorporation requirements.

Article XV (extent of application).—Like the Model, the BIT clarifies that the treaty applies to the political subdivisions of the Parties and clarifies the national treatment obligation on states, territories and possessions of the United States—that is, they must provide covered investment treatment no less favorable than that accorded investments of United States nationals and companies from other U.S. states (Art. XV:1). This provision would not affect a state's ability to treat an out-of-state resident or corporation differently than an in-state resident or corporation. As in the Model, a Party's BIT obligations apply to state enterprises in exercising any governmental authority delegated it by the Party (Art. XV:2).

Article XVI (final provisions).—The BIT is identical to the Model as to its entry into force, its application to current and future investments, termination, and continued temporary application to investments made or acquired prior to any termination date. As in the Model, the BIT Annex and Protocol form an integral part of the Treaty.

Annex (sectoral exemptions).—Both the United States and the Republic of Albania have exempted listed sectors and matters from their MFN and national treatment obligations.

*United States.* The United States may adopt or maintain national treatment exceptions (but must accord MFN treatment) in the following sectors and matters: atomic energy, customhouse brokers, li-

censes for broadcast, common carrier, or aeronautical radio station; COMSAT; subsidies or grants, including government-sponsored loans, guarantees and insurance; state and local measures exempt from Article 1102 of the NAFTA; and landing of submarine cables (Annex, paragraph 1). Both national treatment and MFN exceptions may be made with respect to fisheries, air and maritime transport and related activities; and banking, insurance, securities, and other financial services (Annex, paragraph 2).

In addition, the United States may adopt or maintain MFN and national treatment exceptions with respect to insurance, provided that the exceptions do not result in treatment of covered investments that is less favorable than the treatment that it has agreed to accord to NAFTA parties (Annex, paragraph 3).

*Albania.* The Republic of Albania may adopt or maintain national treatment exceptions (but must accord MFN treatment) as to the following: ownership of land; banking; government subsidies (Annex, paragraph 4).

*Other.* The Annex also contains a reciprocal national treatment obligation with respect to covered investments in the leasing of minerals or pipeline rights-of-way on government land (Annex, paragraph 5).

*Protocol.*—The BIT contains a Protocol to the treaty addressing treatment of confidential information and obligations as to taxation. The Parties clarify that in entering into Article VIII consultations on matters arising under the Treaty, each is obliged to treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information (Protocol, paragraph 1).

The Parties also confirm that Article XIII does not obligate Parties to accord national treatment as to tax matters except as otherwise provided in an investment authorization or an investment agreement (Protocol, paragraph 2).

## IV. Entry Into Force and Termination

### A. ENTRY INTO FORCE

The proposed treaty will enter into force 30 days after the date of the exchange of instruments of ratification. From the date of its entry into force, the BIT applies to existing and future investments.

### B. TERMINATION

The proposed treaty will continue in force for ten years after ratification without termination. A Party may terminate the proposed treaty ten years after entry into force if the Party gives one year's writtennotice of termination to the other Party. If terminated, all existing investments would continue to be protected under the BIT for ten years thereafter.

## V. Committee Action

The Committee on Foreign Relations held a public hearing on the proposed treaty, annex and protocol with Albania on November 30, 1995. The hearing was chaired by Senator Thompson. The Commit-

tee considered the proposed treaty, annex and protocol with Albania on March 27, 1996, and ordered the proposed treaty, annex and protocol favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty, annex and protocol.

## VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommended favorably the proposed treaty and on balance, the Committee believes that the proposed treaty is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. Several issues did arise in the course of the Committee's consideration of the BIT, and the Committee believes that the following comments may be useful to Senate consideration of this treaty and to the State Department and the Office of the United States Trade Representative, which share jurisdiction over this treaty.

### A. CURRENT INVESTMENT STATISTICS

[In millions of dollars]

| | Direct investment | Stock | Exports | Imports |
|---|---|---|---|---|
| 1992 | 0 | 0 | 36 | 6 |
| 1993 | 0 | 0 | 34 | 8 |
| 1994 | 17 | 5 | 16 | 7 |
| 1995 | (1) | (1) | 14 | 10 |

[1] No data.

*United States direct investment flows to Albania*

The chart above reflects the amounts of direct investment which flowed from the United States to Albania in the indicated calendar year, as published in the Commerce Department's "Survey of Current Business." Data for 1995 have not yet been released.

*United States year-end stocks of direct investment in Albania*

The chart above reflects the total amount of U.S. direct investment accumulated over time as of the end of each year cited, as published in the Commerce Department's "Survey of Current Business." The date are available only through 1994 and are valued at historical cost less depreciation and scrapping. They do not reflect the current market value of the businesses in which U.S. persons have invested.

*United States trade with Albania*

The trade data in the chart above for 1994 and 1995 comes from the U.S. Bureau of Census' December 1995 press release. Those through 1993 are taken from the International Monetary Fund's "*Directions of Trade.*" The IMF received its trade data for this report from the Bureau of Census. The import data include the cost of the imported goods, shipping insurance and freight. Overall imports totaled $621 million and overall exports totaled $112 million in 1993.

The Committee recognizes that Albania is an extremely poor country and that the transition to an open market economy will be

slow and difficult. The Committee encourages the Government of Albania to make use of the proposed treaty to encourage United States foreign investment, thereby increasing the small gains it has made in United States foreign direct investment. The Committee believes that only through the development of an open and free market will Albania be able to attract substantial foreign investment that will both benefit the Albanian people and support United States exports.

### B. UNRESOLVED INVESTMENT DISPUTES

The Committee is pleased that agreement has been reached to compensate United States citizens whose property was appropriated by the former communist Government in Albania. The "Agreement on the Settlement of Certain Outstanding Claims" provides that the Government of Albania will pay to the United States Government a lump sum of $2 million in settlement of all claims "arising from any nationalization, expropriation, intervention, and other taking of, or measures affecting, property of nationals of the United States prior to the date of this agreement." State Department officials have informed Committee staff that they are in the process of negotiating payment and have every expectation of receiving the $2 million from gold reserves garnished during World War II.

The Foreign Claims Settlement Commission of the Department of Justice is currently conducting a claims solicitation and adjudication program in order to make awards to eligible U.S. national claimants. To date, the Commissioners have acted on 132 claims. Once all claims have been adjudicated and awards determined, those claimants will be paid pro rata from the settlement amount. As of April 30, 1996, 298 claims had been filed by U.S. citizens. The Committee understands that because of the age of some of the claims, which date back to the 1940s, and the lack of records in Albania, progress may be slow and some of the claims difficult to resolve. The Committee supports, however, fair and timely adjudication of these claims.

### C. ENFORCEMENT

Following the hearing on the bilateral investment treaties, Senator Helms requested information regarding the utility of the bilateral investment treaty with Argentina. Specifically, Senator Helms requested that the State Department identify outstanding investment disputes with United States corporations doing business in Argentina and actions taken by the U.S. to address the BIT violations. Since its entry into force on October 24, 1994, two disputes have developed in Argentina. The following is excerpted from the State Department's response to Senator Helms: [1]

> We are aware of two investment disputes that have developed in Argentina recently.

[1] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

*1. CDSI*

CDSI is a Maryland computer firm involved in a contract dispute with the Cordoba provincial government in Argentina. CDSI believes that Cordoba officials improperly reversed a contract award to a firm with which it had a subcontract, depriving it of the value of its investment.

Department officials have discussed the case with CDSI representatives in Washington. Embassy officials are in regular contact with CDSI representatives in Buenos Aires.

CDSI has informed us that, if the dispute is not resolved through ongoing negotiations, it may avail itself of the right to binding arbitration under the BIT. We will continue to work with company and officials in Argentina to resolve this case. [State Department officials have informed Committee staff that CDSI recently reached an agreement with the provincial government of Cordoba. According to State Department officials the parties are satisfied with the agreement.]

*2. Mi-Jack*

Mi-Jack, based in Illinois and Texas, owns about 30% of a company that purchased the right to operate one of five terminals at the Port of Buenos Aires. (The rest of the equity is not owned by Americans.) Mi-Jack is operating the dock in accordance with regulations, fees, and labor rules specified by the Government of Argentina in the tender.

At some point after this tender process began, the Argentine federal government transferred adjacent dock property to the Buenos Aires provincial government. The provincial government leased the property to a company which began operating a sixth terminal, without the conditions imposed on other dock operators by the federal government. Mi-Jack maintains that this unequal treatment is a BIT violation, and has requested USG assistance.

Department and other agency officials have discussed the case with Mi-Jack. Our Ambassador recently urged the Argentine Minister of Economy and the Governor of the Province of Buenos Aires to address the issues Mi-Jack has raised and resolve the dispute.

The Committee believes that the value of the proposed treaty depends upon the extent to which it is enforced. The Committee refers to the two cases in Argentina, cited above, as examples of how the proposed treaty can be a useful tool both to business and United States embassies in protecting the interests of United States business directly investing in-country. The Committee believes that the treaty should serve as more than a diplomatic tool. The Committee notes that local remedies and domestic enforcement of arbitral awards are essential steps in enforcing the guarantees provided in the proposed treaty and believes that the President should communicate, at the time of the exchange of the instruments of ratification, the importance of a domestic enforcement regime to the ultimate success of the proposed treaty. Such an indication

would add credence to the U.S. position that BITs provide genuine protections to investors, and are not merely rhetorical endorsements of market economies.

### D. PROTECTING U.S. BUSINESSES INVESTING ABROAD

Although a BIT provides certain legal protections designed to give investors recourse in the case of unfair treatment, the role of the U.S. State Department and other government agencies such as USTR remains essential to the protection of U.S. citizens doing business abroad.

Issues regarding the role of the State Department and U.S. posts abroad in assisting U.S. investors were raised during the Committee's consideration of the BIT. After the November 30, 1995 hearing, Senator Helms requested a description of the general procedure at U.S. Embassies, and in Washington, for assisting U.S. investors when potential BIT violations, or investment disputes, including expropriated property claims, in countries not a Party to a BIT, are brought to the attention of the Embassy by the investors. State Department's response to this inquiry, in a letter dated December 18, 1995,[2] is reproduced below:

> An important responsibility of all U.S. diplomatic posts abroad is to assist U.S. investors and property owners in the resolution of disputes with the host government. Where disputes arise, U.S. posts and the Department provide a range of services to the U.S. claimant.
>
> These services include:
>
> (1) advising the U.S. claimant of local legal counsel which may be available to handle similar disputes;
>
> (2) assisting the U.S. claimant in contacting host government officials which may be in a position to facilitate a resolution of his claim;
>
> (3) directly encouraging host government officials to negotiate a resolution of the claim; (such contracts may be on behalf of a single claimant or multiple claimants where there are a number of outstanding claims);
>
> (4) occasionally, where the circumstances warrant, the U.S. may decide to directly espouse a claim or claims; and
>
> (5) in addition, where a BIT is in force, other options (e.g. binding investor-state arbitration) may be brought to the attention of the investor and/or local officials.
>
> Given the wide variety of circumstances associated with investment disputes around the globe, the range of resources available at individual diplomatic posts, the variety of assistance being requested by individual investors, and the diversity of host country investment regimes, a good deal of discretion is necessary to tailor individual responses to the particular circumstances of the case.

[2] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

For example, the approach taken in the case of a country which has a well functioning judicial system and demonstrated effectiveness in adjudicating disputes may be quite different from that taken with respect to cases where some or all of these conditions do not prevail. The investor's preferences also guide our response. The current approach to providing assistance to U.S. claimants in investment disputes permits us the flexibility needed to tailor a response that reflects both the conditions prevalent in the host country and the investor's own strategy.

Action on investment disputes is coordinated through constant routine communication among Embassy and Washington offices. This is supplemented by periodic formal requests from the Department for information on investment disputes and by the Posts' preparation of the Investment Climate Statements for each country. In addition, the Department chairs the Interagency Staff Coordinating Group on Expropriations ("Expropriation Group"), which is comprised of representatives from the Office of the United States Trade Representative, the Overseas Private Investment Corporation, the Department of Commerce, and the Department of Treasury. This group meets periodically to discuss expropriation and related issues.

In addition to assisting individual U.S. investors when they have an investment dispute, we engage in activities that could help prevent investment disputes. Officials in Washington and in our Embassies also examine investment practices in other nations and work to discourage other governments from passing legislation that might disadvantage U.S. investors and lead to investment disputes. The results of these examinations are included in the annual Investment Climate Statement, a report which is widely used by both U.S. officials and investors. We also engage in negotiations with other governments on BITs and multilateral disciplines that help protect the interests of U.S. investors.

In the past year or two, we have reached a point where a significant number of BITs have entered into force and, thus, apply to U.S. investment. At this time, we are reviewing ways to even better inform our posts about the obligations contained in these BITs, in order to assist U.S. investors and monitor compliance with these obligations by our BIT treaty partners.

The Committee supports the efforts of the State Department and U.S. foreign posts to educate businesses and ensure that the investment climate in these countries remains open and fair for U.S. businesses. The Committee supports the BIT as a tool for both businesses and U.S. diplomats to ensure fair investment environments where U.S. companies are doing business.

In addition, Senator Helms requested an assessment of the utility of developing procedures at the State Department to ensure consistently timely response when investors bring foreign investment problems to the attention of U.S. Posts and the Department.

State Department's response to this inquiry, was also included in the dated December 18, 1995 letter, as reproduced below:

> It is current State Department policy and practice to respond in a timely manner when investors bring investment problems to the attention of embassies. Any lapse in such practice can and should be brought to the attention of the Office of Investment Affairs in Washington, which will ensure that a response is forthcoming.
>
> While a timely response should be a constant, we believe that the nature of that response should vary from case to case. Investors benefit from the freedom our diplomats enjoy to pursue solutions tailored to the investor's problems. In some countries, a quite call from an Embassy officer to a government official can help an investor. Elsewhere, if the government has not been responsive, we may directly approach senior government officials.
>
> The following examples illustrate the variety and complexity of individual circumstances.
>
> > A company informed us of an investment dispute, but specifically requested that we not take any action as negotiations continued.
> >
> > In a country undergoing civil strife, investors are pursuing arbitration through an international financial institution.
> >
> > In one country, we have had to develop specialized procedures and increase Embassy staffing to deal with a very large number of claims.
>
> Supplanting our existing flexible process for assisting U.S. claimants with a "one size fits all" policy would not likely work to the benefit of investors. Investors gain when we are free to fashion a response that takes into consideration the facts unique to that dispute, the investor's strategy for obtaining resolution to the dispute, the resources available to the USG to promote a quick resolution to the dispute, and the broader economic and political context within which we and the investor must work to achieve the desired outcome.
>
> As described in the previous question, American diplomats and Department employees use a wide variety of strategies to assist U.S. citizens in investment disputes abroad. Required procedures could have significant resource implications without increasing the effectiveness of these strategies. Furthermore, we do not believe that a procedure developed in Washington which may not reflect either the unique conditions existing in a particular country or the experiences of our diplomats or businessmen is in the interests of either U.S. investors or the United States.

The Committee agrees that a "one size fits all" approach to addressing how best to protect U.S. investors faced with disputes with foreign governments would not be useful. However, the Committee supports the development by State and USTR of flexible procedures that ensure that all U.S. investors, large and small will

be given timely assistance when they raise investment issues with the U.S. State Department, both at the missions and in Washington. The Committee expects that such procedures would ensure appropriate coordination between U.S. missions and the State Department and the Office of the U.S. Trade Representative in Washington.

## VII. Explanation of Proposed Treaty and Protocol

For a detailed article-by-article explanation of the proposed bilateral investment treaty, annex, and protocol, see the analysis contained in the transmittal documents included in Treaty Doc. 104–19.

## VIII. Text of the Resolution of Ratification

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of The Treaty Between the Government of the United States of America and the Government of the Republic of Albania Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 11, 1995 (Treaty Doc. 104–19).

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